

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 CLAYTON-M. BERNARD-EX.,

4 Plaintiff

5 v.

6 MICHELLE ARTICE GARDNER,

7 Defendant

Case No.: 2:25-cv-00569-APG

**Order Denying Motion to Declare
Defendant a Vexatious Litigant**

[ECF No. 28]

8 Plaintiff Clayton-M. Bernard-Ex. moves to have defendant Michelle Artice Gardner
9 declared a vexatious litigant based on filings Gardner has made in other courts. ECF No. 28. A
10 district court has the “inherent power to enter pre-filing orders against vexatious litigants.”
11 *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047, 1057 (9th Cir. 2007) (citing 28 U.S.C.
12 § 1651(a)). Because a pre-filing order implicates a litigant’s due process right of access to the
13 courts, a court should enter such an extreme remedy “only after a cautious review of the
14 pertinent circumstances.” *Id.* “Nevertheless, flagrant abuse of the judicial process cannot be
15 tolerated because it enables one person to preempt the use of judicial time that properly could be
16 used to consider the meritorious claims of other litigants.” *Id.* (simplified).

17 Before I can enter a pre-filing order, I must examine four factors. First, the litigant must
18 have been “given notice and a chance to be heard before the order is entered.” *Id.* I may satisfy
19 “the requirement of providing an opportunity to be heard by written submission rather than an
20 oral or evidentiary hearing.” *Windsor v. Boushie*, 677 F. App’x 311, 311-12 (9th Cir. 2017).
21 Second, I must “compile an adequate record for review.” *Molski*, 500 F.3d at 1057 (quotation
22 omitted). “An adequate record for review should include a listing of all the cases and motions”
23 leading me to “conclude that a vexatious litigant order was needed.” *Id.* at 1059 (quotation

1 omitted). Third, I “must make substantive findings about the frivolous or harassing nature of the
2 [litigant]’s litigation.” *Id.* at 1057. To determine whether the litigant’s conduct is frivolous or
3 harassing, I must evaluate “both the number and content of the filings as indicia of the
4 frivolousness of the litigant’s claims.” *Id.* at 1059 (quotations omitted). The “ultimate
5 substantive issue in resolving a motion for a pre-filing order [is] whether a litigant who has a
6 history of vexatious litigation is likely to continue to abuse the judicial process and harass other
7 parties.” *Id.* at 1058 (quotation omitted). “Finally, the vexatious litigant order must be narrowly
8 tailored to closely fit the specific vice encountered.” *Id.* at 1057 (simplified). A pre-filing order
9 is overbroad if it prevents the litigant from filing any suit in the district court or applies to a suit
10 against anyone when the record showed the plaintiff was litigious with respect to only one group
11 of defendants. *Id.* at 1061.

12 I deny Bernard-Ex.’s motion for several reasons. First, Gardner has not been served or
13 appeared in this action, so she has not had notice and an opportunity to be heard. As for the
14 nature of Gardner’s filings, Bernard-Ex. notes that Gardner filed numerous cases in the Court of
15 Federal Claims, which have all been dismissed. He also states that Gardner filed suit in the
16 Central District of California and the Eastern District of New York. He states, without
17 elaboration, that Gardner’s conduct in other courts “constitutes an ongoing effort to harass,
18 delay, and obstruct [his] case.” ECF No. 28 at 5. It is unclear what any of Gardner’s cases have
19 to do with this case, as Bernard-Ex was not a defendant in any of those cases. And because there
20 does not appear to be a connection between this case and Gardner’s filings in other cases, a pre-
21 filing order in this case would be overbroad.

22 Further, Bernard-Ex. seeks not only that I declare Gardner a vexatious litigant and enjoin
23 her from filing cases or motions without leave of court, he also seeks compensatory and punitive

1 damages. ECF No. 28 at 4. But Bernard-Ex. does not identify how Gardner's filings have
2 harmed him, nor has he submitted proof of harm and damages.

3 I THEREFORE ORDER that plaintiff Clayton-M. Bernard-Ex.'s motion to declare
4 defendant a vexatious litigant and for sanctions **(ECF No. 28) is DENIED.**

5 DATED this 28th day of April, 2025.

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8 ANDREW P. GORDON
9 CHIEF UNITED STATES DISTRICT JUDGE
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